IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 5599 of 2005(N)

AGAINST THE ORDER IN IA.1916/03 IN OS.185/2002 of PRINCIPAL MUNSIFF,ALAPPUZHA

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PETITIONERS:

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1. VASUMATHI, AGED 40,
W/O.CHIDAMBARAN, CHALUNKAL VELI,
S.N.PURAM P.O., CHERTHALA.

2. SAJI, S/O.CHIDAMBARAN, AGED 25 DO.DO.

3. SAJILAL, AGED 21, S/O.CHIDAMBARAN, DO.DO

4. BHARGAVI, AGED 62, CHALUNKAL VELI,
DO.DO.

BY ADV. SRI.SHAJI THANKAPPAN

RESPONDENT:

K.G.RAJAPPAN NAIR, AGED 78,
RADHAKRISHNA SADANAM, S.N.PURAM P.O.,
CHERTHALA.

BY ADV. SRI.M.P.KRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.5599/2005 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PETITION FILED BY PETITIONERS AS I.A.1917/03 IN O.S.185/2002 OF MUNSIFF'S COURT, ALAPPUZHA.

EXT.P2: COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P1.

EXT.P3: COPY OF THE COMMON ORDER IN I.A.1916/2003 AND I.A.1917/2003 IN O.S.185/2002 OF MUNSIFF COURT, ALAPPUZHA.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE PLAINT O.S.NO.185/2002 FILED BY THIS RESPONDENT BEFORE THE PRINCIPAL MUNSIFF COURT, ALAPPUZHA.

EXT.R1(B): COPY OF THE I.A.NO.1074/2002 IN O.S.NO.185/2002.

EXT.R1(C): COPY OF THE I.A.NO.1916/2003.

EXT.R1(D): COPY OF THE I.A.NO.1917/2003.

EXT.R1(E): COPY OF THE OBJECTION TO I.A.NO.1916/2003 AND 1917/2003 FILED BY THE PETITIONER.

EXT.R1(F): COPY OF THE I.A.NO.2178/04 RESTORATION APPLICATION.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.5599 of 2005

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Dated: 1st August, 2007

JUDGMENT

The judgment dictated on 24.7.2007 is recalled.

2. Mr.Shaji Thankappan, counsel for the petitioners confesses that C.M.Appeal No.28 of 2004 was not pending before the Sub Court, Alappuzha on 24.7.2007 though the submission that the same is pending was made before me. The learned counsel would further submit that yesterday (after noticing the counter affidavit filed by the respondent) an application for restoration of the C.M.Appeal has been filed by the petitioners.

3. Heard both sides.

4. Learned counsel for the respondent submits that the issue can be decided in the C.M.Appeal. I do not think that the same is possible since the correctness or otherwise of the order dismissing the delay petition is to be considered in this Writ Petition only and any order dismissing this Writ Petition will have a bearing on the C.M.Appeal also. Under these circumstances, it is ordered that Ext.P3 order to the extent it pertains to I.A.No.1917/03 will stand set aside and that I.A. will stand allowed on condition that the petitioners in the

Writ Petition pay to the respondent either directly or through his counsel in the court below a sum of Rs.5,000/- by way of cost and pays a further sum of Rs.1000/- to the Kerala High Court Legal Services Committee by way of additional cost within one month from today, failing which the impugned order will stand confirmed and the Writ Petition will stand dismissed. The learned Subordinate Judge, Allappuzha will take early decision on the restoration application stated to have been filed by the petitioners in C.M.A.No.28 of 2004 depending on whether the petitioners have secured the benefit of this judgment by paying the cost on time.

The Writ Petition is disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**